



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTHERN REGIONAL OFFICE

13901 Crown Court, Woodbridge, Virginia 22193

(703) 583-3800 Fax (703) 583-3821

www.deq.virginia.gov

Molly Joseph Ward
Secretary of Natural Resources

David K. Paylor
Director

Thomas A. Faha
Regional Director

**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
FAIRFAX PETROLEUM REALTY, LLC
AND
DOGWOOD PETROLEUM REALTY, LLC
FOR
EXXON R/S # 26180
Facility ID No. 3009999
AND
EXXON R/S # 28875
Facility ID No. 3009967**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Fairfax Petroleum Realty, LLC, and Dogwood Petroleum Realty, LLC, for the purpose of resolving certain violations of the State Water Control Law and the applicable regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
2. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
3. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

Consent Order

Fairfax Petroleum Realty, LLC & Dogwood Petroleum Realty, LLC

Exxon R/S # 26180, ID No. 3009999 & Exxon R/S # 28875, ID No. 3009967

Page 2 of 11

4. "Dogwood Petroleum" means Dogwood Petroleum Realty, LLC, a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Dogwood Petroleum Realty, LLC, is a "person" who owns Facility #1.
5. "Facility #1" means the physical location where the UST and/or UST system is installed and/or operated, known as Exxon R/S # 26180 located at 5211 Ox Road, Fairfax, Virginia. The Facility's USTs and UST system are owned by Dogwood Petroleum, LLC, and the Facility is further identified by UST Facility ID#3009999.
6. "Facility #2" means the physical location where the UST and/or UST system is installed and/or operated, known as Exxon R/S # 28875 located at 801 Dolley Madison Boulevard McLean, Virginia. The Facility's USTs and UST system are owned by Fairfax Petroleum Realty, LLC, and the Facility is further identified by UST Facility ID#3009967.
7. "Fairfax Petroleum" means Fairfax Petroleum Realty, LLC, a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Fairfax Petroleum is a "person" who owns Facility #2.
8. "Form 7530-2" means the Notification for Underground Storage Tanks form used by DEQ to register and track USTs for proper operation, closure and ownership, in accordance with 9 VAC 25-580-70.
9. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
10. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
11. "Operator" means any person in control of, or having responsibility for, the daily operation of the UST system as defined in Va. Code § 62.1-44.34:8 and 9 VAC 25-580-10.
12. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
13. "Owner" means any person who owns an UST system used for storage, use, or dispensing of regulated substances as defined in Va. Code § 62.1-44.34:8 and 9 VAC 25-580-10.
14. "Person" means an individual, trust, firm, joint stock company, corporation, including a government corporation, partnership, association, any state or agency thereof, municipality, county, town, commission, political subdivision of a state, any interstate body, consortium, joint venture, commercial entity, the government of the United States or any unit or agency thereof.

15. "Regulated Substance" means an element, compound, mixture, solution or substance that, when released into the environment, may present substantial danger to the public health or welfare, or the environment, as defined in Va. Code § 62.1-44.34:8 and 9 VAC 25-580-10.
16. "Regulations" means the Underground Storage Tanks: Technical Standards and Corrective Action Requirements, 9 VAC 25-580-10 *et seq.*
17. "Release detection" means determining whether a release of a regulated substance has occurred from the UST system into the environment or into the interstitial space between the UST system and its secondary barrier or secondary containment around it.
18. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 9 (Va. Code §§ 62.1-44.34:8 through 62.1-44.34:9) of the State Water Control Law addresses Storage Tanks.
19. "Underground Storage Tank" or "UST" means any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is 10% or more beneath the surface of the ground as defined in Va. Code § 62.1-44.34:8 and 9 VAC 25-580-10.
20. "Va. Code" means the Code of Virginia (1950), as amended.
21. "VAC" means the Virginia Administrative Code.
22. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

SECTION C: Findings of Fact and Conclusions of Law

1. Dogwood Petroleum is the current owner of Facility #1, formally owned by Fairfax Petroleum. Fairfax Petroleum is the owner of Facility #2. Fairfax Petroleum and Dogwood Petroleum store regulated substances in the forms of gasoline and diesel in USTs at the Facilities.

Facility #1:

2. On May 23, 2012, Department staff inspected Facility #1 and conducted a file review of facility records to evaluate the Fairfax Petroleum's compliance with the requirements of the State Water Control Law and the Regulations. At that time, there were three 12,000 gallon gasoline USTs at the Facility. In response to the inspection, DEQ issued a Deficiency Letter to Fairfax Petroleum on June 1, 2012. The issues remained uncorrected and therefore DEQ issued a Warning Letter to Fairfax Petroleum on April 12, 2013. The following issues were noted during this inspection and file review:

- a. Failure to provide documentation to demonstrate that release detection records are maintained. Specifically, the Owner failed to provide release detection records for the past twelve months for the automatic tank gauging and monthly interstitial monitoring of the three double-walled, gasoline USTs.
 - b. Failure to provide all the documentation requested to demonstrate compliance with the UST regulations.
3. 9 VAC 25-580-180 requires that UST system owners and operators must maintain records in accordance with 9 VAC 25-580-120, including results of any sampling, testing, or monitoring, for at least one year, either at the facility and immediately available for inspection or at a readily available alternative site and available for inspection upon request.
4. 9 VAC 25-580-120 states that owners and operators of UST systems must cooperate fully with inspections, as well as requests for document submission.
5. On September 6, 2013, the Department issued Notice of Violation No. NOV-UST-12-09-NRO-004 to the Fairfax Petroleum for violations listed in paragraphs C(2) through C(6), above.
6. On September 20, 2013 Fairfax Petroleum submitted a written response to the NOV summarizing the actions taken at Facility #1. In the written response, Fairfax Petroleum stated that the record keeping compliance issues at Facilities #1 were due to the fact that at the time of the inspection they were switching the Veeder-Root monitoring software from FMS (Third Party) to Inform.net (In-house). This reset the Veeder-Root, so all previous data was erased.
7. On September 25, 2013, Department staff met with representatives of Fairfax Petroleum to discuss the violations, including Fairfax Petroleum's response dated September 20, 2013. At the meeting, DEQ and representatives of Fairfax Petroleum discussed the violations listed in the Facility #1 NOV and the violations that would lead to the issuance of a NOV for Facility #2. At the meeting, DEQ received copies of release detection and sensor status reports for September 2012 through September 2013 for the three USTs located at Facility #1.

Facility #2:

8. On January 29, 2013, Department staff inspected Facility #2 and conducted a file review of Facility records to evaluate the Fairfax Petroleum's compliance with the requirements of the State Water Control Law and the Regulations. At that time, there were four USTs at the Facility: two 8,000 gallon gasoline USTs, one 12,000 gallon gasoline UST and one 10,000 gallon diesel UST. On January 30, 2013, Fairfax Petroleum submitted passing release detection records for November 2012 – January 2013. In response to the

inspection and the submitted records, DEQ issued a Deficiency Letter to Fairfax Petroleum on January 31, 2013. The following issues were noted during this inspection:

- a. Failure to provide documentation to demonstrate that release detection records were maintained. Specifically, Automatic Tank Gauging records for four tanks from February 2012 through October 2012 were missing.
 - b. Failure to staff the Facility with a Class C operator on site during all operating hours. (On June 25, 2014, Fairfax Petroleum submitted training records, dated April 11, 2012 for the on site operators for Facility #2).
 - c. Failure to provide all the documentation requested to demonstrate compliance with the UST regulations.
9. 9 VAC 25-580-180 requires that UST system owners and operators must maintain records in accordance with 9 VAC 25-580-120, including results of any sampling, testing, or monitoring, for at least one year, either at the facility and immediately available for inspection or at a readily available alternative site and available for inspection upon request.
 10. 9 VAC 25-580-120.2.E requires that " Owners and operators must maintain ... Documentation of operator training required by 9VAC25-580-125, including verification of training for current Class A, Class B, and Class C operators, and current list of operators and written instructions or procedures for Class C operators in accordance with 9VAC25-580-125 (relating to operator training)."
 11. 9 VAC 25-580-125.F.2 requires that "Owners and operators of underground storage tank facilities shall prepare and maintain a list of designated Class A, Class B, and Class C operators".
 12. 9 VAC 25-580-120 requires that owners and operators of UST systems must cooperate fully with inspections, as well as requests for document submission.
 13. On October 18, 2013, the Department issued NOV No. NOV-UST-13-10-NR0-001, to Fairfax Petroleum for violations listed in paragraphs C(8) through C(12), above.
 14. On November 11, 2013, Fairfax Petroleum submitted a NOV response including the previous submitted release detection records for November 2012 – January 2013 and a statement that the missing records were due to the fact that at the time of the inspection they were switching the Veeder-Root monitoring software from FMS (Third Party) to Inform.net (In-house). This reset the Veeder-Root, so all previous data was erased.
 15. On April 23, 2014, DEQ received a Form 7530-2, dated April 18, 2014, stating that Dogwood Petroleum was the new registered owner of Facility #1.

16. Based on the results of January 29, 2013 and May 23, 2012 inspections, the September 25, 2013 meeting, and subsequent documentation submitted to DEQ by Fairfax Petroleum, the Board concludes that Fairfax Petroleum and Dogwood Petroleum have violated 9 VAC 25-580-120, 9 VAC 25-580-125.F.2, 9, 9 VAC 25-580-180, and as described in paragraphs C(2) through C(12), above.
17. Fairfax Petroleum has submitted documentation that verifies that the violations described in paragraphs C(2) and C(8) have been corrected.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Fairfax Petroleum and Dogwood Petroleum, jointly and severally, and Fairfax Petroleum and Dogwood Petroleum, jointly and severally, agree to pay a civil charge of \$1,625.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Fairfax Petroleum and Dogwood Petroleum shall include their Federal Employer Identification Numbers (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Petroleum Storage Tank Fund (VPSTF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Fairfax Petroleum and Dogwood Petroleum shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Fairfax Petroleum and Dogwood Petroleum for good cause shown by Fairfax Petroleum, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. NOV-UST-13-09-NRO-004, dated September 6, 2013 and NOV No. NOV-UST-13-10-NRO-001, dated October 18, 2013. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.

3. For purposes of this Order and subsequent actions with respect to this Order only, Fairfax Petroleum and Dogwood Petroleum admit the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Fairfax Petroleum and Dogwood Petroleum consent to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Fairfax Petroleum and Dogwood Petroleum declare they have received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Fairfax Petroleum and Dogwood Petroleum to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Fairfax Petroleum and Dogwood Petroleum shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Fairfax Petroleum and Dogwood Petroleum shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Fairfax Petroleum and Dogwood Petroleum shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and

- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

- 9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
- 10. This Order shall become effective upon execution by both the Director or his designee and Fairfax Petroleum and Dogwood Petroleum. Nevertheless, Fairfax Petroleum and Dogwood Petroleum agree to be bound by any compliance date which precedes the effective date of this Order.
- 11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after Fairfax Petroleum and Dogwood Petroleum have completed all of the requirements of the Order;
 - b. Fairfax Petroleum and Dogwood Petroleum petitions the Director or his designee to terminate the Order after they have completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Fairfax Petroleum and Dogwood Petroleum.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Fairfax Petroleum and Dogwood Petroleum from their obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

- 12. Any plans, reports, schedules or specifications attached hereto or submitted by Fairfax Petroleum and Dogwood Petroleum and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
- 13. The undersigned representative of Fairfax Petroleum and Dogwood Petroleum certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Fairfax Petroleum and Dogwood Petroleum to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Fairfax Petroleum.

Consent Order

Fairfax Petroleum Realty, LLC & Dogwood Petroleum Realty, LLC

Exxon R/S # 26180, ID No. 3009999 & Exxon R/S # 28875, ID No. 3009967

Page 9 of 11

14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

15. By its signature below, Fairfax Petroleum and Dogwood Petroleum voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 24th day of October, 2014.



Thomas A. Faha, NRO Regional Director
Department of Environmental Quality

Fairfax Petroleum Realty, LLC voluntarily agrees to the issuance of this Order.

Date: 09/02/2014 By: EYOB MAMO, AS PRESIDENT OF FAIRFAX SPE, INC. 7K
(Person) (Title) MANAGING MEMBER OF FAIRFAX
Fairfax Petroleum Realty, LLC PETROLEUM REALTY, LLC

Commonwealth of Virginia
City/County of FAIRFAX

The foregoing document was signed and acknowledged before me this 2ND day of

September, 2014, by Eyob MAMO who is

PRESIDENT FAIRFAX SPE, INC. of Fairfax Petroleum Realty, LLC, on behalf of the
company. MANAGING MEMBER

Erin Lashay Dogwood
Notary Public

367803
Registration No.

My commission expires: 10/31/2018

Notary seal



Dogwood Petroleum Realty, LLC voluntarily agrees to the issuance of this Order.

Date: 09/02/2014 By: EYOB MAMO, PRESIDENT OF DOGWOOD SPE, INC. THE
AS MANAGING MEMBER OF DOGWOOD PETROLEUM
REALTY, LLC
(Person) (Title)
Dogwood Petroleum Realty, LLC

Commonwealth of Virginia
City/County of FAIRFAX

The foregoing document was signed and acknowledged before me this 2ND day of

September, 2014, by Eyob Mamo who is

PRESIDENT DOGWOOD SPE, INC. of Dogwood Petroleum Realty, LLC, on behalf of the
company. MANAGING MEMBER

Erika D.
Notary Public

367803
Registration No.

My commission expires: 10/31/2018

Notary seal: